Filed 12/8/09 P. v. Garcia CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. JUAN PABLO GARCIA, Defendant and Appellant.	G041213 (Super. Ct. No. 06CF3246) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, John Conley, Judge. Affirmed as modified.

Stephen S. Buckley, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, James D. Dutton and Michael T. Murphy, Deputy Attorneys General, for Plaintiff and Respondent.

Juan Pablo Garcia was convicted of unlawful possession of a billy club and sentenced to prison for two years and eight months. Garcia filed a pretrial motion to suppress (Pen. Code, § 1538.5)[1] his statements and the physical evidence seized from his car, asserting he was unlawfully detained. The court denied the motion and this appeal followed. Garcia also argues the trial court erred in calculating his presentence custody credits. We agree with this final contention and direct the trial court to modify the judgment to reflect the correct calculations. In all other respects, the judgment is affirmed as modified.

I

FACTS

On October 16, 2006, at approximately 4:00 p.m., City of Orange Police Officer Damon Allen was on routine patrol when he saw what appeared to be an inch crack in Garcia's left taillight. Allen initiated a traffic stop and Garcia complied. As Allen walked to Garcia's car, he noticed the smell of marijuana. Allen asked Garcia if he had marijuana, and Garcia admitted that he did. Then, Garcia pulled a bag of marijuana from his pocket and handed it to Allen.

Allen called for backup and two additional officers arrived at the scene. Allen ordered Garcia to exit his car and sit on a curb. Allen asked Garcia for permission to search his car, and Garcia consented to a search. During this search, Allen found a hollow metal pipe lying between the driver's seat and the center console. The pipe was approximately 13 inches in length and an inch and a half in diameter. Allen showed Garcia the pipe and asked, "[w]hat is the pipe for?" Garcia responded, "[f]or protection." Garcia works for a sprinkler company and obtained the pipe at work.

---

[1] All further undesignated statutory references are to the Penal Code.

Allen advised Garcia of his *Miranda*[2] rights. Garcia told Allen he was a former member of the Los Crooks criminal street gang, and that he used the pipe for protection against rival gang members he encountered at work. Allen arrested Garcia for possession of a deadly weapon.

After the arrest, it was determined that the taillight was not really cracked. Instead, the reflective trim just to the right of the taillight was cracked. Both the taillights and the reflective trim had a red plastic lens. Allen testified that the reflective trim and taillight looked exactly the same. Garcia filed a motion to suppress his statements to Officer Allen and the physical evidence seized from the car.

At the pretrial hearing, Garcia argued the police seized evidence subsequent to an unlawful detention and therefore inadmissible. The court denied the motion finding Officer Allen had a reasonable belief Garcia had violated the Vehicle Code.

II

DISCUSSION

Section 1538.5 Motion

Garcia argues his right to be free from unreasonable searches and seizures under the United States and California Constitutions was violated when Officer Allen stopped him for allegedly having a cracked taillight. He further argues that since the stop was illegal, the statements he made to Officer Allen and the physical evidence obtained from his car were inadmissible at trial. We disagree.

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts

---

[2] *Miranda v. Arizona* (1966) 384 U.S. 436.

so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

We first review the factual findings of the trial court to determine whether these findings are supported by substantial evidence. It is undisputed that Garcia's rear reflector was cracked when Officer Allen stopped him. Garcia's car had two taillights, one on the right side and one on the left. Next to each taillight was a red reflective trim that ran from taillight to taillight. Testimony at the preliminary hearing revealed that the reflective trim and taillights looked the same because they were both covered by a red plastic lens. In light of the similarities between the taillight and the reflective trim, we find there was substantial evidence for the trial court to find that Allen reasonably believed Garcia had a cracked taillight when the officer initiated the stop.

At oral argument, Garcia suggested that Allen realized the error sometime before he made personal contact, but that fact is not in the record and irrelevant in any event. What is important is Allen's reasonable belief Garcia's car posed a safety hazard or would soon pose a safety hazard when the sun went down.

Having found there was substantial evidence to support the trial court's factual findings, we exercise our independent judgment to determine whether Garcia's detention was reasonable under the Fourth Amendment. "[A] police officer can legally stop a motorist *only* if the facts and circumstances known to the officer support at least a reasonable suspicion that the driver has violated the Vehicle Code or some other law." (*People v. Miranda* (1993) 17 Cal.App.4th 917, 926.) The Vehicle Code requires every car manufactured and first registered on or after January 1, 1958 to have two tail lamps. (Veh. Code, § 24603, subd. (b).) The code also requires "[a]ll lighting of a required type installed on a vehicle shall at all times be maintained in good working order." (Veh. Code, § 24252, subd. (a).) Section 25950, subdivision (b) of the Vehicle Code helps define what is "good working order" providing that "emitted light from all lamps . . . visible from the rear of the vehicle, shall be red."

An officer is permitted to stop a car if it has a cracked taillight that emits white light. Although Officer Allen testified he did not see any light from the crack, we still find Allen's belief that Garcia had violated the Vehicle Code reasonable. As noted above, it seems unreasonable to expect an officer to ignore a safety hazard at 4:00 p.m. when the sun is sure to set at 8:00 p.m. If the taillight instead of the reflective trim had been cracked Garcia would have been in violation of the Vehicle Code. Given the similarities between the taillight and reflective panel, we find that Allen was reasonable in his belief that the reflective panel was part of the taillight and therefore, that Garcia had violated the Vehicle Code. Therefore, we conclude Allen lawfully detained Garcia and the evidence obtained during the resulting search was properly admitted at trial.[3]

Garcia's reliance on *People v. White* (2003) 107 Cal.App.4th 636 *(White)* is misplaced. In *White*, the officer pulled over the defendant for having an air freshener hanging from the rearview mirror and for having only one Arizona license plate affixed to the car. (*Id*. at p. 641-643.) There was no law against hanging an air freshener from the rearview mirror, nor was the driver required to have two Arizona plates affixed to the car. (*Ibid*.) The court ruled that the officer was seeking to enforce a nonexistent legal standard and therefore had unlawfully detained the driver. (*Id*. at 643-644.) Here, Officer Allen stopped Garcia for having what he believed was a cracked taillight. Under the Vehicle Code an officer may stop a driver for having a cracked taillight; Allen was not seeking to enforce a nonexistent legal standard as the officer had in *White*.

Presentence Conduct Credits

The trial court determined that Garcia should receive 350 actual days custody credit and 70 days conduct credit. Thus, the lower court limited Garcia's presentence conduct credit to 20 percent of the time served. The court appears to have applied section 667, subdivision (c)(5) which provides, "[t]he total amount of credits

---

[3] Having found Officer Allen reasonably believed the taillight was cracked it is unnecessary to discuss whether the reflector was in fact in "good working order."

awarded . . . shall not exceed one-fifth of the total term of imprisonment imposed and shall not accrue until the defendant is physically placed in the state prison."

Garcia argues that the lower court should have applied section 4019 in determining his precustody credits. The Attorney General concedes the issue and we agree with this concession. Although it appears the trial court believed the 20 percent limitation on conduct credits in strike cases applied to presentence custody credits, section 667, subdivision (c)(5) only applies after the defendant is "physically placed in state prison." Garcia was not placed in state prison until after sentencing. Consequently, the trial court should have applied section 4019 in determining the presentencing custody credits. (See § 4019, subd. (a)(4) [applies "[w]hen a prisoner is confined in a county jail . . . following arrest and prior to the imposition of sentence for a felony conviction."].)

Under section 4019, subdivision (f) "a term of six days will be deemed to have been served for every four days spent in actual custody." Accordingly, Garcia should have received an additional two days credit for every four days served. The calculation under section 4019 is made """by dividing the number of days spent in custody by four and rounding down to the nearest whole number. This number is then multiplied by two and the total added to the original number of days spent in custody."""" (*People v. Philpot* (2004) 122 Cal.App.4th 893, 908.) Therefore, Garcia's 350 actual days in the county jail yields 174 days of conduct credit, for a total of 524 days of presentence custody credit.

III

DISPOSITION

The clerk of the superior court is directed to correct the abstract of judgment to reflect Garcia is entitled to 350 actual days credit, plus 174 days conduct credit for a total of 524 days presentence custody credits, and to forward a corrected copy of the abstract of judgment to the Department of Corrections. In all other respects, the judgment is affirmed as modified.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

FYBEL, J.